

## **REMARKS**

The Office Action mailed April 1, 2004, has been reviewed. Certain amendments are herein requested to the claims and the specification to more particularly define Applicants' inventive concept. It is respectfully submitted that the changes to the claims and specification are proper, do not constitute new matter, and will not create an additional burden on the Examiner. That is, the amendments to the claims and specification are merely to make more explicit that which was implicit, inherent, or intrinsic from an overall view of the drawings and specification as originally submitted. Therefore, it is respectfully requested that such amendments to the claims and specification be entered.

For the reasons set forth below, Applicants believe Claims 1-6 are in condition for allowance.

### **Rejection of Claims 1-6 under 35 U.S.C. § 112**

In the Office Action mailed April 1, 2004, the Examiner rejected claims 1-6 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner stated that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In support of the rejection, the Examiner stated:

In claims 1 and 4, the limitation of the scent dispersing from the inner layer without manipulation of the container is not supported in applicant's disclosure in this application or parent application 10/196,901. Applicant's disclosure only states that the scent is imparted to the object in the container and does not state if any manipulation or no manipulation is needed to carry this out.

For the reasons set forth below, the rejection of claims 1-6 under 35 U.S.C. § 112, first paragraph is respectfully overcome.

By the present amendment, the specification has been amended to more clearly describe the scent as dispersing from the inner layer without requiring manipulation of the container. Bases for such amendments is found, in part, in FIG. 3. FIG. 3 shows scent dispersing lines 31 without showing the container being manipulated. In addition, as the Examiner noted, no description of requiring manipulation is contained in the application. The reason for this is that the claimed invention is directed to a method of storing and imparting a scent to an object. The meaning of the word "storing" is "to place or leave in a location for later use." This would imply that if an object is being stored it is not being manipulated.

For these reasons, it is respectfully submitted that the amendments to the specification are believed to be proper and not to constitute new matter in that the amendments to the specification merely to make more explicit that which was implicit, inherent, or intrinsic from an overall view of the drawings and specification as originally submitted.

In view of the above, it is respectfully requested that the Examiner withdraw the rejection of claims 1-6 under 35 U.S.C. § 112, first paragraph.

#### **Rejection of Claims 1-2 under 35 U.S.C. § 102(b)**

In the Office Action mailed April 1, 2004, the Examiner rejected claims 1-2 under 35 U.S.C. § 102(b) as being anticipated by Boxler (U.S. Patent No. 5,707,696).

For the reasons set forth below, the rejection of claims 1-2 is respectfully overcome. More specifically, it is submitted that the Boxler reference does not anticipate the method of storing and imparting a scent to an object recited in claims 1 and 2.

Applicants' claim 1, as amended, is directed to a method of storing and imparting a scent to an object. The object is positioned in a container having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound such that the inner layer has a scent that disperses from the inner layer without manipulation of the container.

The Examiner contends that the Boxler reference discloses a method of storing and imparting a scent to an object. The Examiner further contends that the Boxler reference discloses a container having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of polymeric material and scented compound. Applicants respectfully disagree. Applicants find no teaching in the Boxler reference to imparting a scent to an object or to a container having an outer layer fabricated of a moisture and gas barrier material.

The Boxler reference is directed to the method of producing a scented material. More specifically, the Boxler reference discloses the formation of an intermediate stock product formed by extruding a mixture of a polymeric material and a fragrance. The intermediate stock product may be used as a packing material or formed into a netting mesh that may be used to form a bag of the type often used to hold produce, such as fruit. Again, however, the Boxler reference does not teach an outer layer fabricated of a moisture and gas barrier material.

With respect to the Examiner's contention that the Boxler reference discloses imparting a scent to an object, Applicants' again respectfully disagree. The Boxler reference is silent with respect to imparting a scent to an object. Moreover, one of the stated purposes of the Boxler invention is to "produce a netting mesh having a fragrance which does not contaminate the items ultimately contained therein." (column 2, lines 14-16)

So, while the Boxler reference does disclose a scented container, the Boxler reference does not disclose a container having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound from which an object positioned in the will be imparted with the scent. As such, it is readily apparent that the Boxler reference does not anticipate Applicants' claims 1-2. In view thereof, it is respectfully requested that the Examiner withdraw the rejection of claims 1-2 under 35 U.S.C. § 102(b), as applicable to the claims now pending in the application.

#### **Rejection of Claims 1-2 and 4-5 under 35 U.S.C. § 103(a)**

In the Office Action mailed April 1, 2004, the Examiner rejected claims 1-2 and 4-5 under 35 U.S.C. § 103(a) as being unpatentable over McGriff (U.S. Patent No. 5,297,354) in view of Boxler. For the reasons set forth below, the rejection of claims 1-2 and 4-5 is respectfully overcome.

It is respectfully submitted that the McGriff reference when combined with selective elements from the Boxler reference does not teach, disclose, or even suggest a method of storing and imparting a scent to an object as defined by Applicants' claims 1 and 2 and

a method of storing and imparting a scent to a fish bait as defined by Applicants' claims 4 and 5.

Applicants' claim 1, as amended, is directed to a method of storing and imparting a scent to an object. The method includes the step of unsealing a sealed container having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound such that the inner layer has a scent that disperses from the inner layer without manipulation of the container. The object is positioned in the container and the container is resealed. The object is then stored in the container for a period of time sufficient to permit the scent of the inner layer to disperse from the inner layer without manipulation of the container and to be imparted to the object while the outer layer serves as a barrier to prevent surrounding objects from being contaminated with the scent. The container is unsealed and the scented object removed from the container for use. The container is resealed for later use.

The McGriff reference teaches an apparatus for applying bait oil to a fishing lure. The apparatus includes a flexible pouch and an absorbent foam applicator lining the interior of the pouch. In use, an individual squirts or spray scented bait oil into the pouch where the bait oil is absorbed by the absorbent foam applicator. A fishing lure is then inserted into the pouch and the pouch is squeezed by the fisherman causing the bait oil to be applied to the lure.

It is respectfully submitted that, while the McGriff reference does teach a container in which an object is positioned for the purpose of imparting a scent to the object, the McGriff reference not teach a sealed container having an outer layer fabricated of a

moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound such that the inner layer has a scent that disperses from the inner layer without manipulation of the container, as required by Applicants' claims 1-2 and 4-5 (as amended). Furthermore, the McGriff reference does not teach resealing the container after the object has been positioned in the container and storing the object in the container for a period of time sufficient to permit the scent of the inner layer to disperse from the inner layer without manipulation of the container and to be imparted to the object.

In contrast, the McGriff reference teaches a method of applying a scented oil to an object that requires the scented oil to be applied to an absorbent foam applicator by the user. As noted by the Examiner, the McGriff reference does not teach an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound such that the inner layer has a scent that disperses from the inner layer without manipulation of the container. In addition, the foam applicator is positioned in a pouch that is preferably "somewhat" water resistant. Applicants' submit that a "somewhat" water resistant pouch does not teach an outer layer fabricated of a moisture and gas barrier material.

The pouch of McGriff is further described as having a flap that may be closed and secured with a suitable fastening means, such as a hook and loop assembly. To this end, Applicants submit that the McGriff reference does not teach sealing the pouch. In fact, it is submitted the McGriff reference teaches away from sealing the pouch where McGriff, starting at column 4, line 41, states, "In alternative embodiments, flap 38 need not be

closed. In fact, in certain embodiments no flap at all is required.” The McGriff reference is silent regarding a desire to have the pouch sealed.

With the oil applied to the applicator, the user of the McGriff pouch then inserts the object in the pouch and squeezes, or otherwise manipulates, the pouch to apply the scented oil to the object. After oil is evenly applied to the object, the user removes the object from the pouch.

The McGriff reference does not teach storing the object in the pouch so that the scent is imparted to the object without requiring the user to manipulate the pouch. Applicants claimed invention has the advantage of allowing a user to position the object in the container without having to first squirt any oil in the container which may be spilled in the process and cause an undesirable mess. The container may then be sealed and ignored until such time a user is ready to use the object. When the user is ready to use the object, such as a fish bait, the object will have had the desired scent imparted to it without requiring any handling of fish scented oils or manipulation of the container on the part of the user.

The Examiner as attempted to supply certain deficiencies of the McGriff reference with elements from the Boxler reference. However, it is respectfully submitted that the Boxler reference does not supply the before described deficiencies of the McGriff reference.

As mentioned above, the Boxler reference is directed to the method of producing a scented material. More specifically, the Boxler reference discloses the formation of an intermediate stock product formed by extruding a mixture of a polymeric material and a fragrance. The intermediate stock product may be used as a packing material or formed

into a netting mesh that may be used to form a bag of the type often used to hold produce, such as fruit.

So, while the Boxler reference does disclose a scented container, the Boxler reference does not disclose a container having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound.

Furthermore, Applicants submit that one of ordinary skill in the art would not be motivated to substitute the foam applicator of McGriff with the scented material of Boxler as suggested by the Examiner. Such a modification in an attempt to provide the method recited in Applicants' claims 1 and 4 would clearly destroy the intended function of the McGriff reference as described above. That is, modifying the McGriff device with the scented material of Boxler would not result in the application of the desired scent to the fish bait. More specifically, one of the stated purposes of the Boxler invention is to "produce a netting mesh having a fragrance which does not contaminate the items ultimately contained therein." (column 2, lines 14-16) The purpose of the McGriff device and Applicants' claimed invention is to "contaminate," or otherwise impart, the object with a scent.

In view thereof, Applicants submit that the Examiner has not established a prima facie case of obviousness. As stated by the Federal Circuit in *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988),

The PTO has the burden under 103 to establish a prima facie case of obviousness . . . . It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.



To make such a showing, some reason or suggestion from the prior art reference cited by the Examiner for why one of ordinary skill in the art would have been led to produce the claimed invention is required. In the absence of such reason or suggestion, the prima facie case of obviousness must fail.

It has been consistently held that when a § 103 rejection is based upon a modification of a reference that destroys the intent, purpose, or function of the invention disclosed in the reference, such a proposed modification is not proper and the prima facie case of obviousness cannot be properly made. In re Gordon, 733 F.2d 900, 211 USPQ 1125 (Fed. Cir. 1984).

Clearly, the Boxler reference does not provide the necessary teaching or incentive to one of ordinary skill in the art to make the required modifications to the McGriff method. In fact, the Boxler reference teaches away from the Examiner's proposed modification since such a modification destroys the purpose or function of the method disclosed in the McGriff reference. As such, there is no suggestion to modify the McGriff method in a manner which produces Applicants' claimed invention.

In view of the above, it is respectfully submitted that neither McGriff nor Boxler, whether viewed singularly or in combination, discloses, teaches, or even suggests the method defined in Applicants' claims 1-2 and 4-5. Therefore, it is respectfully requested that the Examiner reconsider and withdraw the rejection of claims 1-2 and 4-5, as applicable to the claims now pending in the application.

### **Rejection of Claims 4-5 under 35 U.S.C. § 103(a)**

In the Office Action mailed April 1, 2004, the Examiner rejected claims 4-5 under 35 U.S.C. § 103(a) as being unpatentable over Boxler in view of McGriff. For the reasons set forth below, the rejection of claims 4-5 is respectfully overcome.

It is respectfully submitted that the Boxler reference when combined with selective elements from the McGriff reference does not teach, disclose, or even suggest a method of storing and imparting a scent to a fish bait as defined by Applicants' claims 4 and 5.

As discussed above, the Boxler reference does not disclose a method of imparting a scent to an object or a container having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound. The Boxler reference discloses the formation of an intermediate stock product formed by extruding a mixture of a polymeric material and a fragrance. The intermediate stock product may be used as a packing material or formed into a netting mesh that may be used to form a bag of the type often used to hold produce, such as fruit. The netting mesh is provided with a fragrance which does not contaminate the items ultimately contained in the bag.

The Examiner has attempted to supply the deficiencies of the Boxler reference with elements from the McGriff reference. However, for reasons similar to those discussed above, it is respectfully submitted that the McGriff reference does not supply the before described deficiencies of the Boxler reference.

Moreover, if one were to provide the scented material of Boxler with a fish attractant scent, the result would be a mesh netting which would be smelled by everyone but the fish. In other words, because the Boxler reference does not disclose a container with an outer

barrier layer and the scented material of Boxler is intended to put off a scent that does not contaminate the object, the Examiner's proposed modification would result in a mesh netting container that had a fish attractant scent but which would not impart the scent to the a fish bait positioned in the container.

In view of the above, it is respectfully requested that the Examiner reconsider and withdraw the rejection of claims 4-5, as applicable to the claims now pending in the application.

**Rejection of Claims 3 and 6 under 35 U.S.C. § 103(a)**

In the Office Action mailed April 1, 2004, the Examiner rejected claims 3 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Boxler, Boxler as modified by McGriff, and McGriff as modified by Boxler as applied to claims 1 and 4, and further in view of Raymond et al. (U.S. Patent No. 5,632,113).

For the reasons set forth below, the Examiner's rejection of claims 3 and 6 under 35 U.S.C. § 103 is respectfully traversed.

For the reasons set forth above, it is respectfully submitted that the prior art references of Boxler and McGriff, whether viewed singularly or in combination, do not disclose, teach or even suggest the method recited in independent claims 1 and 4, and for the same reasons such references do not render obvious the method recited in claims 3 and 6. The comments concerning the teachings of Boxler and McGriff will not be reiterated herein, but such are deemed relevant to the Examiner's rejection of claims 3 and 6 and are therefore expressly incorporated herein by reference.

It is respectfully submitted that the Raymond et al. reference does not supply the deficiencies of Boxler and McGriff. The Raymond et al. Reference discloses a fishing

tackle organizer for securing and arranging fishing baits and lures. The organizer includes a flexible nylon casing member having attached binder rings, a plurality of plastic storage bags attachable to the rings, and a carrying handle attached to the rings. Each plastic storage bag has a extended strip on a bottom end with two pre-punched holes for securing the bag to the rings.

The Raymond et al. reference does not disclose a container having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound from which an object positioned in the will be imparted with the scent. Moreover, the Raymond et al. reference does not disclose storing an object in a container for a period of time sufficient to permit the scent of an inner layer to disperse from the inner layer without manipulation of the container and to be imparted to the object while the outer layer serves as a barrier to prevent surrounding objects from being contaminated with the scent.

In view thereof, it is respectfully submitted that the method defined by Applicants' claims 3 and 6 is not rendered obvious within the meaning of 35 U.S.C. § 103. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 3 and 6.

#### **Supplemental Information Disclosure Statement**

Applicants have filed herewith a supplemental information disclosure statement in accordance with 37 CFR 1.97(c) to disclose U.S. Patent No. 4,990,381 issued to Holzner.

The Holzner reference discloses a package or container having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film

extruded from a mixture of a polymeric material and a scented compound from which an object positioned in the container will be imparted with the scent without manipulation of the container. The container is formed from two layers of a multi-layer laminated sandwich sheet superimposed and stuck together by welding or gluing.

The Holzner reference does not disclose a container with a re-sealable closure. To this end, the package disclosed in the Holzner reference is for a one time use. Objects, such as cosmetic products, detergents, paper, foods, or tobacco are sealed in the package of Holzner and removed before their consumption. The Holzner reference does not teach positioning objects back into the package for the purpose of re-applying the scent to the objects once the package has been unsealed.

Furthermore, Applicants submit that the Holzner reference provides no teaching or suggestion to provide a re-sealable closure member. To the contrary, the Holzner reference is concerned with alleviating the dissipation of scent from the scented layer during the manufacturing process. Holzner addresses this concern by extruding the scented layer and the barrier layer simultaneously to form a sheet having two distinct layers. The outer barrier layer is caused to cover and thus protect the inner scented layer during the extrusion process to prevent notable evaporation of the scent from the inner scented layer.

In use as a package, an object is positioned between two sheets, and a package is formed by gluing or welding the two sheets so that the object is encompassed between the two sheets. At the same time, the scent is protected from external influences, such as oxidation or the action exerted by the humidity of the surrounding environment, and thus preserved during the storage period. The Holzner reference teaches that with the scent

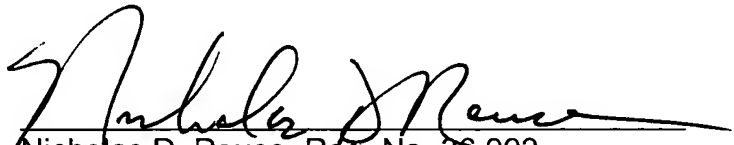
protected by the barrier layer, the scent will be retained inside the package until it is opened when the scent will disperse into the surrounding atmosphere. By providing a re-sealable closure that would permit objects to be inserted back into the package after an initial use, the inner scented layer would be subject to evaporation and external influences which is contrary to the intent and purpose of the Holzner invention. As such, it is submitted that there is no motivation or incentive for one to attempt to modify the package of Holzner to reconstruct an apparatus over which one can maintain the claimed inventive concept recited in claims 1-6 is obvious with the meaning of 35 U.S.C. § 103.

### **Conclusion**

It is respectfully submitted that this application, as now amended, is in condition for allowance for the reasons stated hereinabove. Therefore, it is requested that the Examiner reconsider each and every rejection as applicable to the claims now pending in the application and issue a timely Notice of Allowance.

This Amendment is intended to be a complete response to the Office Action mailed April 1, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas D. Rouse", is written over the printed name and contact information.

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